



City of Seattle

Gregory J. Nickels, Mayor

Department of Planning and Development

D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 3003094

Applicant Name: David Douglas, Waterfront Construction Inc. for
Marc Rudd, owner

Address of Proposal: 2533 39th Avenue East

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Permit to remove two existing non-conforming piers and floating docks and construct one conforming pier. Project includes installation of a boat lift. Original proposal included the installation of a bulkhead and erosion protection. These two items are no longer proposed.

The following approvals are required:

Shoreline Substantial Development Permit - to allow the construction of a moorage pier in an Urban Residential/Conservancy Recreation (UR/CR) Shoreline Environment. (Section 23.60.020A Seattle Municipal Code)

SEPA - Environmental Determination - Chapter 25.05 SMC

SEPA DETERMINATION: ☐ Exempt ☐ DNS ☐ MDNS ☐ EIS
 ☒ DNS with conditions
 ☐ DNS involving non-exempt grading or demolition
 or involving another agency with jurisdiction.

BACKGROUND DATA

Site and Area Description

The proposal site is located along Lake Washington facing northward toward Webster Point and the 520 floating bridge. The site consists of two parcels: A southern parcel contains a single-family residence, which is not in the shoreline, and the northern parcel which contains no structure but is in the shoreline. However, the two parcels for the purposes of this proposal are considered one development site.

The site gently slopes from the house at the south end of the site to the north. The northern portion (parcel) of the site by the shoreline is wooded with numerous Cottonwood trees. The surrounding parcels are developed with the single family structures and most also contain piers.

Zoning

Single Family 5000 (SF 5000) with the Urban Residential/Conservancy Recreation (UR/CR) Shoreline Master Program designations.

Proposal Description

The applicant proposes to remove an existing non-conforming pier and dock float and construct a new "L" shaped moorage pier consisting 4 foot by 27 foot near-shore walkway, an 8 foot by 73 foot walkway, and a 5.5 foot by 18 foot walkway forming the foot of the "L". An electric boat lift will be added to the shore side of the foot of the "L" portion.

The project previously proposed to install log and rock bulkheads along the shoreline and do wetland enhancement. These elements are no longer a part of the project.

Small diameter steel pilings are proposed, as well as prisms and / or grating to allow penetration of ambient light below the structure.

Public Comment

One comment was received during the comment period that ended on September 9, 2005. The comments objected to the proposal in a number of ways but that are addressed by conformance with the Shoreline Substantial Development Program requirements for these Shoreline Environments.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT

Section 23.60.030 of the Seattle Municipal Code provides criteria for review of a shoreline substantial development permit and reads: *A substantial development permit shall be issued only when the development proposed is consistent with:*

- A. *The policies and procedures of Chapter 90.58 RCW;*
- B. *The regulations of Chapter 23.60; and*
- C. *The provisions of Chapter 173-27 WAC*

Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and the Shoreline Management Act.

A. The Policies and Procedures of Chapter 90.58 RCW

Chapter 90.58 RCW is known as the Shoreline Management Act of 1971. It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy aims to protect against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their

aquatic life, while protecting public rights of navigation and corollary incidental rights. Permitted uses in the shorelines shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle and other jurisdictions with shorelines, adopted a local shoreline master program, codified in the Seattle Municipal Code at Chapter 23.60 that also incorporates the provisions of Chapter 173.27 WAC. Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions. As the following analysis will demonstrate, the subject proposal is consistent with the procedures outlined in RCW 90.58.

B. The Regulations of Chapter 23.60

Chapter 23.60 of the Seattle Municipal Code is known as the "Seattle Shoreline Master Program". In evaluating requests for substantial development permits, the Director must determine that a proposed use meets the approval criteria set forth in SMC 23.60.030 (cited above). Development standards of the shoreline environment and underlying zone must be considered, and a determination made as to any special requirements (Shoreline Conditional Use, Shoreline Variance, or Shoreline Special Use Permit) or conditioning that is necessary to protect and enhance the shorelines area (SMC 23.60.064). In order to obtain a shoreline substantial development permit, the applicant must show that the proposal is consistent with the shoreline policies established in SMC 23.60.004, meets the development standards for all shoreline environments established in SMC 23.60.152 as well as the criteria and development standards for the shoreline environment in which the site is located, any applicable special approval criteria and the development standards for specific uses.

The site is classified as a waterfront lot (SMC 23.60.924). The shoreline designations for the site are Urban Residential/Conservancy Residential (UR/CR) (SMC 23.60.540 and 360). Residential piers are a permitted use in these shoreline environments.

SMC 23.60.004 - Shoreline Policies

The Shoreline Goals and Policies which are part of the Seattle Comprehensive Plan's Land Use Element and the purpose and locational criteria for each shoreline environment designation contained in SMC 23.60.220 must be considered in making all discretionary decisions in the shoreline district. The purpose of the UR and CR environments are stated in SMC 23.60.220.C.6 and C 3, respectively. The applicable sections of these regulations to the current proposal are: in the Conservancy Recreation Environment maximum effort to preserve, enhance or restore the existing natural ecological, biological, or hydrological conditions shall be made in designing, developing, operating and maintaining recreational facilities and in the Urban Residential Environment residential areas shall be protected in a manner consistent with the Single Family Residential Area Policies.

SMC 23.60.064.- Procedures for Obtaining Shoreline Substantial Development Permits

The proposed project is a permitted use in the UR/CR environment (SMC 23.60.540 and 360) and the underlying Single Family Residential 5000 (SF 5000) zoning district (SMC 23.44). As designed, the proposal conforms to the general development standards and the requirements of the underlying residential zone and of the UR/CR overlay zones.

SMC 23.60.152 - Development Standards for all Environments

These general standards apply to all uses in the shoreline environment. They require that design and construction of all uses be conducted in an environmentally sound manner, consistent with the Shoreline Management Program and with best management practices for the specific use or activity. All shoreline development and uses must: 1) minimize and control any increases in surface water runoff so that receiving water quality and shore properties are not adversely affected; 2) be located, designed, constructed, and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area; and 3) be located, constructed, and operated so as not to be a hazard to public health and safety.

The proposed recreational use as conditioned is consistent with these general standards for development within the shoreline area, thereby minimizing any adverse impact to the shoreline area, to water quality and will not be a hazard to the public health and safety.

SMC 23.60.186 and 188, Standards for Natural Beach Protection and Standards for Bulkheads.

The project originally proposed to install a combination of log and rock bulkheads to protect the beach and assist in the enhancement of a small wetland area at the western portion of the shoreline. The SMP prefers natural regenerating systems for the prevention and control of beach erosion over the use of bulkheads. Bulkheads are allowed only to maintain and protect existing land from extreme erosion and do not extend water-ward of the Ordinary High Water Line (OHWL). No evidence of extreme erosion was found at the site's shoreline and the proposed rock and log bulkheads would extend water-ward of the OHWL, therefore the proposed log and rock bulkheads would not be allowed. Consequently, the applicant has removed all proposals for bulkheads.

SMC 23.60.362 Accessory Uses Permitted Outright in the CR Environment

Piers accessory to residences are permitted outright in the CR Environment.

The project site is comprised of two legal parcels, both owned by the applicant. The residence is, however, not on the parcel adjacent to the shoreline. Because the two parcels are considered one building site for this application, the pier is considered accessory to the principal use of a residential structure. At a future time, should the waterfront lot be sold and developed with a residence, the subject pier will then be considered accessory to the new residence, and no longer accessory to the current Rudd residence. A second pier for the either the waterfront lot (new residence) or the upland (Rudd residence) would not be allowed as only one pier is allowed accessory to a permitted residence or to a residence on adjacent land designated UR. The Rudd residence and upland lot are both outside of the 200 foot shoreline boundary and thus not in any shoreline environment.

SMC 23.60.204 Piers and Floats Accessory to Residential Development

The proposal satisfies all applicable standards.

SMC 23.60.570 and SMC 23.60.390 - Development Standards for the UR and CR Environments

The development standard for the UR and CR environments pertinent to this proposal concerns lot coverage of all structures, including piers. The CR environment development standards also contain requirements for natural area protection.

The lot coverage regulations for both shoreline environments require that structures, including piers, not occupy an area greater than thirty-five (35) percent of a waterfront lot. The existing lots combined are 28,840 square feet in area. The proposed dock is approximately 645 square feet. Proposed lot coverage including the single family structure and the proposed dock will be well under the maximum lot coverage of 35 percent of lot area.

If the waterfront parcel of this combined two parcel site is sold, lot coverage of any new residence and accessory buildings will be limited by the size of the proposed dock (approximately 645 square feet).

Natural area protection of the CR environment requires that all developments in this environment be located and designed to minimize adverse impacts to natural areas of biological significance and that development in critical natural areas be minimized. Critical areas include fish spawning areas and migration routes. The biological evaluations prepared by Wetland Resources Inc, (dated October 13, 1999 and February 2002) evaluated effects on bald eagle, coastal/Puget Sound bull trout, and Puget Sound Chinook salmon, concluding that there may be minor effects on all, but no adverse affects. The report supported the mitigation measures being proposed, including the narrow-gauge steel piers, multiple prisms to distribute light beneath the pier decking, or the use of steel grating to achieve the same effect, and all construction phase mitigation measures.

C. The Provisions of Chapter 173-27 WAC

WAC 173-27 establishes basic rules for the permit system to be adopted by local governments, pursuant to the language of RCW 90.58. It provides the framework for permits to be administered by local governments, including time requirements of permits, revisions to permits, notice of application, formats for permits, and provisions for review by the state's Department of Ecology (DOE). Since the Seattle Shoreline Master Program has been approved by DOE, consistency with the criteria and procedures of SMC Chapter 23.60 is also consistent with WAC 173-14 and RCW 90.58. As discussed in the foregoing analysis, the proposal is consistent with the criteria for a shoreline substantial development permit and may be approved.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT

The Shoreline Substantial Development permit is **CONDITIONALLY GRANTED**. Conditions are listed at the end of this report.

ANALYSIS - SEPA

The initial disclosure of the potential impacts from this project was made in the Environmental Checklist (dated July 28, 2005), and supplemental information in the project file submitted by the applicant. The information in the checklist, the supplemental information, and the experience of the lead agency with the review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, and certain neighborhood plans and other policies explicitly referenced, may serve as the basis for exercising substantive SEPA authority. The Overview Policy states, in part, *“Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation”* subject to some limitations. Under such limitations or circumstances (SMC 25.05.665 D) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate. Short-term and long-term adverse impacts are anticipated from the proposal.

Short-term Impacts

The following temporary or construction-related impacts are expected: water impacts (disturbance of migrating fish by sedimentation and clouding due to general construction activity); and 2) noise impacts (also due to pile driving). These impacts are not considered significant because they are temporary (Section 25.05.794, SMC). Although not significant, the impacts are adverse and certain mitigation measures are appropriate as specified below.

Water and Shoreline Impacts

Construction impacts to the lake environment will be mitigated by following best management practices for this type of construction and the Washington Department of Fish and Wildlife and Army Corp of Engineers restrictions on construction work window.

All construction work will occur from a floating barge, the barge will not be grounded, and no machinery will be placed or staged, or access (other than foot access for personal) will occur on the dry land portion of the site.

Noise Impacts

Noise associated with pile driving would likely affect resident fish, but not adversely, according to the Wetland Resources Inc. report. Because of the short term duration and use of vibration dampening equipment for the pile driving, no mitigation is warranted.

Compliance with these applicable policies and ordinances will be adequate to achieve sufficient mitigation and further mitigation by imposing specific conditions is not necessary for these impacts. Other city codes and/or ordinances apply to the proposal and will provide mitigation for the environmental health impacts.

Long-term Impacts

Impacts on Fish

The anticipated long-term impact from this proposal is shading of the underwater area beneath the proposed dock and interference with near-shore habitat and processes from the location of pilings. The biological evaluation reach as “may affect, not likely to adversely affect” determination with respect to Puget Sound bull trout and Chinook salmon, which are listed as Threatened under the Endangered Species Act. Specifically, the proposal will mitigate these impacts by inclusion of glass prisms on the pier decking, or the use of grating to achieve 60 percent light penetration. Minimization of adverse effects on near-shore habitat and shoreline processes will be assured by conformance with State and Federal agency standards for the location and size of pilings. No additional mitigation is necessary.

Summary

In conclusion, several long-term effects on the environment may result from the proposed development, however by following the proposed mitigation measures, these effects will be mitigated. The conditions imposed at the end of this report are intended to mitigate specific impacts identified in the foregoing analysis, to control impacts not adequately regulated by codes or ordinances, per adopted City policies.

DECISION – SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030 (2)(C)
- [] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030 (2)(C).

CONDITIONS – SEPA and SHORELINES

During Construction

1. Appropriate best management practices (BMPs) should be employed to prevent material from entering Lake Washington during the proposed in and over-water work. BMPs should include the deployment of a boom surrounding the construction area. The boom should remain in place for the duration of the proposed work.
 - a. The boom should serve to collect any floating debris, which may enter the water during the repair activities. This floating debris should be removed from the water daily, stored on-the work barge, and then disposed of in the appropriate upland facility.

- b. If heavy (sinking) debris enters the water during the repair work the location of the debris should be documented in a log to be kept through the duration of the project. When construction is complete a diver should retrieve all debris that has entered the water and sunk during construction.

For the Life of the Project

The owner(s)/responsible party(s) shall:

2. The light transmission features installed in the new decking shall be maintained through the life of the project through cleaning of the prisms or removal of debris in the grating as appropriate.
3. All treated lumber to be used for the project shall meet or exceed the standards established in "Best Management Practices for the Use of Treated Wood in Aquatic Environments" developed by the Western Wood Preservers Institute
<http://www.wwpinstitute.org/>.
4. Non-treated material shall be used in the decking.

Signature: (signature on file)
Art Pederson, Land Use Planner
Department of Planning and Development
Land Use Division

Date: May 1, 2006